

**SUPREME COURT
OF THE UNITED STATES**

IN THE SUPREME COURT OF THE UNITED STATES

LARRY STEVEN WILKINS, ET AL.,)
Petitioners,)
v.) No. 21-1164
UNITED STATES,)
Respondent.)

Pages: 1 through 70

Place: Washington, D.C.

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4 Petitioners,)
5 v.) No. 21-1164
6 UNITED STATES,)
7 Respondent.)
8 - - - - -
9
10 Washington, D.C.
11 Wednesday, November 30, 2022
12
13 The above-entitled matter came on for
14 oral argument before the Supreme Court of the
15 United States at 10:03 a.m.
16
17 APPEARANCES:
18
19 JEFFREY W. McCOY, ESQUIRE, Sacramento, California; on
20 behalf of the Petitioners.
21 BENJAMIN W. SNYDER, Assistant to the Solicitor
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23 on behalf of the Respondent.
24
25

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1 P R O C E E D I N G S

2 (10:03 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear
4 argument this morning in Case 21-1164, Wilkins
5 versus the United States.

6 Mr. McCoy.

7 ORAL ARGUMENT OF JEFFREY W. McCOY

8 ON BEHALF OF THE PETITIONERS

9 MR. McCOY: Mr. Chief Justice, and may
10 it please the Court:

11 This Court has repeatedly held that
12 when Congress wants to make a time bar
13 jurisdictional, it must clearly state so. In
14 passing the Quiet Title Act, Congress did not
15 clearly state that the statute of limitations is
16 jurisdictional. Instead, the text, context,
17 structure, and history indicate that Congress
18 intended the statute of limitations to be a
19 non-jurisdictional affirmative defense.

20 In its briefs here, the government
21 does not argue that Congress clearly stated that
22 the statute of limitations is jurisdictional.
23 Instead, it points to offhand use of the word
24 "jurisdiction" in this Court's previous Quiet
25 Title Act cases. But "jurisdiction" is a word

1 of many meanings, and it wasn't until recently
2 that this Court brought discipline to the use of
3 the term.

4 Prior to that, courts and litigants
5 often used "jurisdictional" to refer to
6 mandatory but non-jurisdictional time bars and
7 other prescriptions. That is what happened in
8 Block and Mottaz. Nothing in those cases
9 indicate that this Court was using
10 "jurisdiction" in the fundamental sense. The
11 issue was not presented to this Court. The
12 parties did not cross swords over it. And the
13 outcome did not turn on subject matter
14 jurisdiction.

15 As a result, whether the Quiet Title
16 Act's statute of limitations is jurisdictional
17 is an open question, and because Congress did
18 not clearly state it is, courts, including this
19 Court, should treat it as non-jurisdictional.

20 I welcome the Court's questions.

21 JUSTICE THOMAS: Mr. McCoy, going
22 beyond the text just for a bit, what do you do
23 with the fact that this statute of limitation
24 occurs in the context of a waiver of sovereign
25 immunity?

1 MR. MCCOY: Well, Your Honor, as this
2 Court has said in Wong or as this Court
3 recognized in Boechler last term, a waiver of
4 sovereign immunity is not necessarily a
5 jurisdictional prerequisite.

6 And what this Court has -- has done is
7 it has construed statute of limitations and
8 other time limits when there was a waiver of
9 sovereign immunity strictly. But construing it
10 strictly is different than jurisdictional and
11 whether it is a jurisdictional time bar.

12 JUSTICE THOMAS: But I think haven't
13 we been quite careful to treat the conditions to
14 waiver of sovereign immunity as jurisdictional
15 or mandatory?

16 MR. MCCOY: Well, mandatory, yes, Your
17 Honor, but mandatory is different than
18 jurisdictional. And Boechler is -- Boechler was
19 a waiver of sovereign immunity. This Court --
20 this Court found that the time bar was
21 non-jurisdictional, even found that there was
22 equitable tolling in that. And, in -- in terms
23 of how this Court has viewed waivers of
24 sovereign immunity, it certainly has strictly
25 construed waivers of time bar, but, again, that

1 is a -- that's a separate question than whether
2 or not it's jurisdictional.

3 CHIEF JUSTICE ROBERTS: Counsel, you
4 and your friend on the other side both rely on
5 this Court's opinion in -- in Beggerly, and I'm
6 not sure why it matters to you whether it's a
7 jurisdictional ruling or simply a ruling about
8 equitable estoppel. Either way -- I mean, maybe
9 you're right on jurisdiction, maybe you're not
10 right on jurisdiction, but either way you lose
11 because the one thing Beggerly was quite clear
12 about was that there was no equitable estoppel.
13 It went through and gave the reasons for that
14 under the Quiet Title Act. What your client is
15 looking for is equitable estoppel because you
16 didn't meet the -- satisfy the timeline.

17 But whether you're right in Beggerly
18 about jurisdiction or not, you still lose,
19 right?

20 MR. MCCOY: No, Your Honor, and in
21 Beggerly, this Court said there was no equitable
22 tolling, but, as Justice Stevens recognized in
23 his concurrence, this Court left open the
24 question of whether there was equitable
25 estoppel, which are distinct equitable doctrines

1 that excuse the statute of limitations.

2 But, beyond that, whether or not this
3 is jurisdiction -- if it's jurisdictional, the
4 plaintiffs have the burden of proving
5 jurisdiction, while, if it is a
6 non-jurisdictional affirmative defense, then the
7 government would have the burden of proving and
8 --

9 CHIEF JUSTICE ROBERTS: Yeah, but
10 they're going to -- they're not going to have
11 any trouble carrying that burden because
12 Beggerly says quite clearly that whether --
13 whether jurisdictional or not, you -- you don't
14 get -- 12 years is 12 years. You don't get
15 beyond that.

16 MR. MCCOY: Your Honor, there are
17 disputed facts, and because of the -- because
18 the Court treated it as a motion for lack of
19 subject matter jurisdiction, under the -- the
20 standards of review in the Ninth Circuit, the
21 Court did not have to engage in these disputed
22 facts.

23 And, in particularly, the Court relied
24 on a 2006 order. We have presented declarations
25 that that order was not posted. We have

1 presented declarations that were -- that were
2 contradictory to how a reasonable person would
3 interpret the maps, including statements from
4 the Bitterroot National Forest itself that said
5 that those maps were unclear, and that is why
6 they engaged in the travel management process.

7 And we -- because it was a
8 jurisdictional burden, the -- the district court
9 did not engage with those disputed facts, and,
10 as a result, we did not get past the motion to
11 dismiss stage, did not even get to motion -- to
12 a motion for summary judgment to be able to make
13 those claims.

14 And to determine whether or not we
15 would lose, this Court only needs to look at the
16 magistrate judge's findings and recommendations
17 and compare them to the district court's
18 findings and recommendations.

19 JUSTICE SOTOMAYOR: Counsel, a Quiet
20 Title action is tried by a judge, correct?

21 MR. MCCOY: Yes.

22 JUSTICE SOTOMAYOR: Not by a jury.
23 And the judge here said -- all of the evidence
24 you've pointed to it looked at and said it
25 considered all the evidence that you provided

1 and the government provided and that it was
2 "abundantly clear that a reasonable person would
3 have known of the government's adverse claim."

4 So I don't know -- whoever bears the
5 burden, that was the Court's findings. So I
6 don't know how you win. But you're going to
7 have to explain that to me and go back to
8 Justice Roberts' question, which was, even if I
9 give you that Justice Souter and Stevens thought
10 that Beggerly only dealt with equitable tolling
11 and not equitable estoppel or fraudulent
12 concealment, what facts do you have to claim
13 equitable estoppel? I always thought this was a
14 tolling case, not an estoppel case.

15 MR. MCCOY: Well, Your Honor, first,
16 just to the question of whether the -- the
17 statute of limitations has run, as the Court
18 said -- this is at Cert Appendix D-3 of the
19 opinion -- that when resolving a motion to
20 dismiss, the -- the Court did not have to hold
21 an evidentiary hearing.

22 And, again, as I said, for the 2006
23 order, we have declarations that dispute that,
24 and we do think that an evidentiary hearing to
25 weigh the credibility of witnesses is necessary

1 for that.

2 As to equitable estoppel -- again,
3 this is on JA 6 -- there was some testimony from
4 a Forest Service official that said that he told
5 Mr. Wilkins -- Mr. Wilkins to participate in the
6 travel management process, and then -- and this
7 is on Joint Appendix 32 -- the Bitterroot
8 National Forest proposed that there -- the road
9 would be decommissioned, and with that, Mr.
10 Wilkins decided not to sue at that time because
11 he had recognized the problems, and this was the
12 travel management process being --

13 JUSTICE SOTOMAYOR: Exactly, but I
14 don't think any representation of that kind has
15 ever been considered equitable estoppel --

16 MR. MCCOY: Your Honor --

17 JUSTICE SOTOMAYOR: -- that some -- an
18 adverse party telling you let's try to work this
19 out doesn't mean you make a choice of whether to
20 sue or not. They're not telling you don't sue.

21 MR. MCCOY: Your Honor, under
22 equitable estoppel, if the adverse party makes
23 representations that it will be resolved, that
24 is one factor in the analysis for equitable
25 estoppel. And, again -- but also there are

1 facts -- even putting aside the equitable
2 estoppel, there are disputed facts over whether
3 -- what a reasonable person would have viewed
4 for this -- for these maps, and there are
5 disputed facts over the 2006 order that were not
6 resolved because the court treated this as a
7 jurisdictional statute of limitations.

8 JUSTICE ALITO: Mr. McCoy, was there a
9 time when this Court regarded sovereign immunity
10 as tied to subject matter jurisdiction?

11 MR. MCCOY: Your Honor, as this Court
12 said in John R. Sand, prior to Irwin, there was
13 an ad hoc approach. And, as I said, certainly,
14 a waiver of sovereign immunity -- this Court
15 views waiver of sovereign immunity strictly, but
16 it was still an ad hoc approach even for, for
17 example, in John R. Sand, what was at issue was
18 the previous cases for the Court of Claims
19 statute, which became the Tucker Act.

20 And it looked -- the -- the previous
21 cases also applied an ad hoc approach to that,
22 and there are distinguishing factors from the
23 Court of Claims statute and the Quiet Title Act,
24 namely, that Congress created its own court, an
25 Article I court, to hear those claims.

1 They are unique claims that arise
2 under the Fifth Amendment, unlike Quiet Title
3 Act claims, which are -- were available at
4 common law, which every state has, and that is
5 some of the factors that indicate that Congress
6 intended, when passing the Quiet Title Act, to
7 treat it as normal -- a normal Quiet Title
8 action.

9 JUSTICE ALITO: Well, there are cases
10 from earlier times when the Court seemed to
11 regard sovereign immunity as tied to subject
12 matter jurisdiction. For example, United States
13 versus Sherwood in 1941, the Court said, "The
14 United States as sovereign is immune from suits
15 save as it consents to be sued, and, therefore,
16 the terms of its consent to be sued in any court
17 define that court's jurisdiction to entertain
18 the suit."

19 So, if that was the Court's view at
20 one time, what does -- what effect does that
21 have on our interpretation of cases like Block
22 and Mottaz?

23 MR. MCCOY: Your Honor, I would
24 disagree that that -- again, jurisdiction is a
25 word of many meanings. And that line that you

1 quoted was also quoted in Lehman versus
2 Nakshian, which 453 U.S. 156, and it quoted the
3 same line, but in that case in Lehman, subject
4 matter jurisdiction was not at issue. The issue
5 was whether a -- a plaintiff in a federal age
6 discrimination case had the right to a jury
7 trial.

8 This Court quoted that language that
9 Your Honor quoted and as more of a canon of
10 construction to interpret this statute strictly
11 and held that because Congress had not
12 explicitly allowed a jury trial, a jury trial
13 was not allowed. This Court has used that
14 language and has used "jurisdiction" in many
15 different ways.

16 CHIEF JUSTICE ROBERTS: Well, if
17 you're looking at the ways it's used, does it
18 make a difference -- I mean, certainly, we've
19 articulated -- correctly set forth the test that
20 we've articulated, and it makes -- the
21 application is pretty direct going forward. The
22 people across the street are on clear notice
23 that they've really got to spell it out if they
24 want one of these time limits to be
25 jurisdictional.

1 But that was not the case when you --
2 you're applying that sort of clear statement
3 requirement to prior cases. Congress wasn't on
4 notice that it had to be particularly clear
5 about the jurisdictional import of these
6 limitations prior to the time we told them they
7 did. In fact, that test we applied, I think,
8 departed quite a bit from some of the prior
9 precedent.

10 And you're right, "jurisdiction" is a
11 word of many meanings. We've said that many
12 times. But going forward, the answer is pretty
13 clear. I mean, it's a whole different thing,
14 isn't it, when you're applying that test to --
15 to the past?

16 MR. MCCOY: This Court rejected a very
17 similar argument last term in *Boechler*, and I
18 believe the Court referred to that argument as
19 the weakest of the Commissioner's argument in
20 that case, that Congress intended to
21 incorporate -- incorporate these views and
22 especially views of appellate courts when it
23 adopted the provision at issue in *Boechler*.

24 And what matters, I think, is -- this
25 is *John R. Sand* -- whether there was a

1 definitive earlier interpretation, and this
2 Court in Reed Elsevier, in Arbaugh, set out some
3 factors for how you would determine whether it
4 was a definitive earlier statement. In Arbaugh,
5 it was if the issue had -- was raised, if the --
6 the parties crossed swords over it, whether the
7 outcome turned on it. In -- in Reed --

8 JUSTICE JACKSON: Mr. McCoy, can I
9 just ask you, can you help me to understand why
10 it matters whether there is a definitive
11 interpretation?

12 I understand that John R. Sand said
13 that, but I -- I guess I'm just struggling with,
14 similar to questions that have already been
15 asked, what difference it makes that in the past
16 the Court allowed for the determination to be
17 made on an ad hoc basis if today, when the
18 question is being asked, we have a clear
19 standard, we're looking for a clear statement,
20 and it seems as even the government in this case
21 suggests in its brief that if we apply that test
22 today, it comes out in a certain way.

23 So what difference does it make that
24 way in the past we had a different way of
25 figuring this out?

1 MR. McCOY: Your Honor, I -- I do not
2 think it does. The key question is whether it's
3 a matter of first impression for this Court, and
4 that's where John R. Sand comes in. As long
5 recognized, if -- if this Court has made a
6 definitive earlier state, then this Court will
7 follow it, but -- and -- but, again, yes, you --

8 JUSTICE JACKSON: But I guess my
9 question is, why should we follow it? Is -- is
10 that just to suggest that we can't have new
11 tests that apply to current determinations that
12 we previously addressed in the past?

13 MR. McCOY: I -- I -- you -- yes, Your
14 Honor. The -- this Court can apply the new
15 standards. And the only question then -- and it
16 seems that my friend on the other side, as you
17 -- as Your Honor pointed out, does not really
18 engage with the test that this Court now
19 applies. The only question is, has this Court
20 held that the statute of limitations is
21 jurisdictional for stare decisis purposes?

22 CHIEF JUSTICE ROBERTS: Well, I mean,
23 it's -- it's -- when you're saying we'll have a
24 new test, the original determination was a
25 ruling on what Congress did, what Congress

1 meant, how to interpret the statute.

2 Now do we -- when we're adopting a new
3 test, are we going back and saying we were wrong
4 in deciding what Congress meant or -- or what?

5 MR. McCOY: Your Honor, I would say
6 that Block and Mottaz do not even opine on
7 whether the statute of limitations is
8 jurisdictional. As this Court said in Reed
9 Elsevier in Footnote 8, if the legal character
10 of the rule was not at issue --

11 CHIEF JUSTICE ROBERTS: So you're
12 saying that sort of the -- the -- the
13 hypothetical, whatever I'm posing, isn't
14 presented, and I understand that, because you
15 think it was not clearly established.

16 But do we transport ourselves back in
17 time and try to say whether that was true when
18 the Court decided the case, which is kind of a
19 -- I'm not sure whether our test requires that
20 or not, but it's kind of an awkward inquiry,
21 because now we go forward in saying, well,
22 Congress knows they've got to be clear, and if
23 they haven't been clear, the answer is easy.

24 But, back then, Congress didn't know
25 it had to be clear, and we were put to what

1 might have been -- well, our predecessors -- a
2 harder question of what did Congress mean in
3 this case, but if they did reach a decision, and
4 you say they didn't, or that we didn't say they
5 did, do we go and do that over and say, well, we
6 said previously it was jurisdictional, but now
7 we're going to say it's not because, when you
8 apply a case principle 80 years down the road,
9 it turns out the answer is different?

10 MR. MCCOY: Your Honor, this Court
11 said no in Boechler. It said that opinions,
12 and, yes, it was discussing appellate opinions,
13 but opinions prior to this Court's discipline to
14 bring use -- to the use of the word
15 "jurisdictional" --

16 CHIEF JUSTICE ROBERTS: It's
17 retroactive discipline.

18 MR. MCCOY: Yes, Your Honor, because
19 -- because jurisdiction, and as this Court
20 admittedly holds, it's been inexact when it has
21 used "jurisdiction." And so -- and, as this
22 Court said in -- in Eberhart or -- and in
23 Kontrick that this Court has sometimes used
24 "jurisdictional" to mean mandatory.

25 And that -- that is what this Court

1 was indicating in Block. In Block, it said that
2 -- what this Court said was that the district
3 court had to engage with a valid affirmative
4 defense. The question presented was: Is a
5 statute of limitations a valid affirmative
6 defense when the -- when the plaintiff is a
7 state? This Court said yes and remanded for
8 that.

9 JUSTICE ALITO: Well, in Block, the
10 Court said, "If North Dakota's suit is barred by
11 the 12-year time limitation, the courts below
12 had no jurisdiction to inquire into the merits."
13 Now, if the Court had said the courts had no
14 subject matter jurisdiction to inquire into the
15 merits, would that decide this case?

16 MR. MCCOY: That would be a stronger
17 indication because the Court would -- would have
18 clearly been saying subject matter jurisdiction,
19 but, in Block, as Judge Easterbrook said in his
20 opinion in Wisconsin Valley, Block is another
21 example of this Court using the term
22 "jurisdiction" loosely, and that is why the
23 Seventh Circuit did not feel bound by Block when
24 it --

25 JUSTICE ALITO: Well, if it had said

1 subject matter jurisdiction, you said that would
2 be stronger. Would it not be dispositive unless
3 we're going to say that Block is -- that we're
4 overruling Block or Block has already been
5 overruled?

6 MR. MCCOY: Yes, I think, if it had
7 used "subject matter jurisdiction" in --

8 JUSTICE ALITO: Okay. So are --

9 JUSTICE KAGAN: I think you're giving
10 too much away there, Mr. McCoy.

11 (Laughter.)

12 JUSTICE ALITO: Well, maybe -- maybe
13 Mr. McCoy could answer my next question.

14 (Laughter.)

15 JUSTICE ALITO: Which is -- although
16 Justice Kagan and I like to ask each other
17 questions.

18 (Laughter.)

19 JUSTICE ALITO: I'll reciprocate. But
20 anyway --

21 JUSTICE KAGAN: Well, you haven't even
22 given me a chance to, but, okay, go ahead.

23 (Laughter.)

24 JUSTICE ALITO: Now I've forgotten
25 what my next question is.

1 (Laughter.)

2 MR. McCOY: Well, let me -- let me
3 rephrase my answer.

4 JUSTICE ALITO: No, no, I know. It's
5 come back to me. So are you advocating a magic
6 words test? So, if -- if Block says subject
7 matter jurisdiction, okay, that's stronger or
8 maybe as strong as it can get, but if they have
9 to use, in interpreting a past decision to
10 determine whether a court was talking about
11 subject matter jurisdiction or a mandatory
12 claims-processing rule, they have to use the
13 magic words?

14 MR. McCOY: No, Your Honor. And
15 even -- even using "subject matter
16 jurisdiction," this was a similar situation that
17 was in Arbaugh, where the Court had referred
18 explicitly to subject matter jurisdiction in the
19 previous Title VII cases, and this Court held in
20 Arbaugh that -- that it was not.

21 And I -- overall, if -- one of the key
22 questions is, if this Court were to overrule
23 Block, what would it overrule? This Court
24 overrules holdings. The holding was that the
25 Quiet Title Act's statute of limitations applies

1 to states. That was not the holding. So there
2 really is nothing to overturn in that -- in that
3 case in --

4 JUSTICE ALITO: Maybe Justice Kagan
5 wants to ask you a question.

6 JUSTICE KAGAN: No, I'm good.

7 (Laughter.)

8 JUSTICE JACKSON: I'll ask a question
9 then. I'll jump in. So I'm still sort of
10 interested in the Chief Justice's points about
11 the rule of decision and how it is that we
12 determine whether or not something is
13 jurisdictional and that we used to do it in a
14 different way in the past and now we have a
15 clearer standard.

16 And it appears that from Boechler we
17 said, well, we don't go back and do it over
18 again. But I guess I'm wondering, if we don't
19 do it over, how do we get everybody on the same
20 page around this kind of determination?

21 It seems to me that you could then
22 have -- if we say -- if we've spoken to this in
23 the past before and we've labeled it
24 jurisdictional, and under today's test, the
25 answer would be non-jurisdictional, but we're

1 stuck because we previously spoke to it, then
2 you might have a situation in which, you know,
3 near-identical if not identical statutory
4 provisions that have the same text, structure,
5 and even history related to this time bar
6 question would have different legal results
7 about the characterization because some of them
8 we had spoken to before and we said
9 jurisdictional, and the new ones, the ones that
10 we hadn't spoken -- maybe they're old, they're
11 old, they were passed by Congress at exactly the
12 same time, but we never had the question before
13 us before about that provision, and that comes
14 to us today and we apply the new rule because we
15 don't have.

16 And that seems to me a really messy
17 and odd way, as opposed to just saying today we
18 have a test, you're bringing this question, I
19 thought the question presented here was is this
20 jurisdictional, you're bringing it to us today,
21 and we're going to apply the test we had today,
22 and to the extent that it's different than what
23 we said in the past, we just chalk it up to the
24 fact that we have a new rule of decision.

25 MR. MCCOY: Yes, Your Honor. And the

1 key is this is a matter of statutory
2 interpretation. And Irwin is -- maybe presents
3 a new canon of statutory interpretation, but the
4 ultimate question is, what did Congress intend?

5 And -- and even -- and, yes, this
6 Court has said it has to clearly state so, but
7 applying the -- the normal canons of statutory
8 construction demonstrates that this is a -- a
9 affirmative defense. And one key aspect is that
10 Congress originally proposed no statute of
11 limitations for the Quiet Title Act. After some
12 negotiations with the Department of Justice, it
13 adopted one, but the Department of Justice said
14 that it would -- if it chose to dispute the
15 statute of limitations, meaning that it's
16 waivable, it would have the burden, meaning that
17 it's an affirmative defense. And those are
18 inconsistent with a jurisdictional rule.

19 JUSTICE BARRETT: Mr. McCoy, let me
20 just slip in one question before we run out of
21 time. I guess I thought that when we started
22 imposing this clear statement rule, we were
23 correcting ourselves. We weren't trying to
24 impose a new burden on Congress that maybe it
25 didn't understand before.

1 I thought we were saying we have been
2 too loose with it because this is not what
3 Congress has been intending. And if that's how
4 you understand our new, you know, rule, I mean,
5 I don't -- clear statement, I thought it was
6 supposed to be approximating what Congress had
7 been doing all along, which makes this question
8 of time lag different because it's not saying,
9 hey, Congress, you have to, you know, line up
10 behind what we say now. It's been saying, like,
11 hey, Congress, we weren't quite getting what you
12 were doing and you were not intending to
13 establish jurisdictional rules. Am I
14 understanding that in a way that --

15 MR. MCCOY: Yes, Your Honor, and that
16 is how courts develop canons of statutory
17 construction. It's really -- it's always about
18 what Congress intended. And I think the clear
19 statement rule in that respect was just a
20 recognition that Congress ordinarily is going to
21 adopt the background principles for things like
22 statute of limitations, and if it wants to
23 divert from that, it needs to be explicit.

24 CHIEF JUSTICE ROBERTS: Thank you,
25 counsel. I just have one more follow-up on this

1 time travel issue. You say it's a question of
2 statutory interpretation.

3 Back in the bad old days where we had
4 a statute to interpret, we looked at all sorts
5 of stuff, you know, hearings, reports,
6 testimony, all sorts of things, sometimes to the
7 expense of the actual language, which these days
8 we look at much more carefully.

9 Now, if we've interpreted the meaning
10 of a statute, put aside statutes of limitations,
11 just the meaning of a statute, and we look at
12 what we did in 1950, and there, the Court relied
13 on all of this extra-statutory material and
14 said, based on that, this is what we think the
15 statute means, today, where we have a different
16 approach, when that question comes up, are we
17 supposed to go back and say: That was then and
18 this is now, and now we're going to look
19 primarily at the plain language, and look, it
20 gives us a different answer. Is that -- is that
21 what we do?

22 MR. MCCOY: Well, Your Honor, I think
23 applying -- looking at everything or applying
24 the language and the structure of the Act, it
25 reaches the same conclusion, which is --

1 CHIEF JUSTICE ROBERTS: Well, I know
2 you think it does, but maybe for some of us we
3 don't think it does reach the same conclusion.
4 Is the way we go about statutory interpretation
5 today to wipe the slate clean and let's say
6 we're going back to the beginning?

7 MR. MCCOY: Well, Your Honor, as
8 Justice Barrett said, it's really, when this
9 Court announced the clear statement rule, it
10 wasn't announcing a rule. It was more just
11 getting at what Congress was trying to do and --
12 and guiding this Court's interpretation, not
13 guiding Congress. And, in that case, this Court
14 is applying that canon of statutory construction
15 when there is a rule and whether or not it's
16 jurisdictional.

17 CHIEF JUSTICE ROBERTS: Thank you.

18 MR. MCCOY: I see that I'm out of
19 time.

20 CHIEF JUSTICE ROBERTS: Well, no,
21 you're -- Justice Thomas, anything further?

22 Justice Sotomayor?

23 Justice Barrett?

24 Justice Jackson?

25 Okay, thank you, counsel.

1 MR. MCCOY: Thank you.

2 CHIEF JUSTICE ROBERTS: Mr. Snyder.

3 ORAL ARGUMENT OF BENJAMIN W. SNYDER

4 ON BEHALF OF THE RESPONDENT

5 MR. SNYDER: Mr. Chief Justice, and
6 may it please the Court:

7 On two prior occasions when the Quiet
8 Title Act's 12-year time bar was squarely at
9 issue, this Court held that the time bar imposed
10 a jurisdictional limit on the Court's power to
11 adjudicate the merits of property claims against
12 the United States.

13 Those decisions were clearly correct
14 under then-governing law, and, indeed, this
15 Court later cited them as controlling authority
16 for the settled principle that conditions on a
17 waiver of sovereign immunity should be treated
18 as jurisdictional.

19 Petitioners now ask this Court to
20 disregard its jurisdictional holdings in Block
21 and Mottaz, arguing that this Court's
22 intervening decisions have made it harder to
23 show that a restriction is jurisdictional and
24 that under the new test, the time bar here
25 should be treated as just a claim-processing

1 rule.

2 For three reasons, the Court should
3 reject that invitation. First, Block and Mottaz
4 reflected this Court's considered and binding
5 judgment that the time bar was jurisdictional
6 and therefore merits stare decisis respect. In
7 both cases, the Court cited earlier decisions
8 that had recognized the strictly jurisdictional
9 nature of comparable limits, and in both cases,
10 the jurisdictional determination had concrete
11 significance for the litigation before the
12 Court. They were not mere drive-by
13 jurisdictional rulings.

14 Second, when Congress amended the
15 Quiet Title Act in 1986, it ratified the
16 jurisdictional determinations of not only this
17 Court but also of the courts of appeals, which
18 had uniformly agreed that the time bar was
19 strictly jurisdictional.

20 Third and finally, revisiting the time
21 bar's jurisdictional status would cause
22 unnecessary disruption. At a broad level, it
23 would leave the lower courts confused about when
24 they have to comply with this Court's
25 applications of governing law.

1 And at a narrower level, Petitioners'
2 rule would just delay the resolution of disputed
3 timeliness questions, preventing the resolution
4 as threshold issues and instead requiring
5 potentially meaningless trials on the merits of
6 decades-old easements and property lines.

7 Rather than bring about that confusion
8 and inefficiency, the Court should adhere to its
9 prior determinations in Block and Mottaz and
10 affirm the decision below.

11 I welcome the Court's questions.

12 JUSTICE THOMAS: Could you reach the
13 same result without relying on the precedent
14 that you cite --

15 MR. SNYDER: So, Justice Thomas --

16 JUSTICE THOMAS: -- just by reading
17 the statute?

18 MR. SNYDER: So, just by reading the
19 statute, I think we would have a good argument
20 that you should treat this as a -- a
21 jurisdictional requirement, and I'm happy to
22 walk through the reasons why I think that's
23 true, but, candidly, nearly all of those reasons
24 were rejected by this Court in Wong. Four
25 justices thought they were persuasive, but five

1 didn't, and we're not back making those same
2 arguments.

3 But, to the extent that you think
4 prior decisions of this Court control here, we
5 think the relevant decisions are Block and
6 Mottaz, which speak to the precise statute of
7 limitations that's at issue here.

8 JUSTICE JACKSON: Can I ask, you said
9 in your third reason that it would cause
10 unnecessary disruption to the lower courts, and
11 I guess I don't -- I don't understand why that's
12 the case.

13 It seems to me the question is, you
14 know, or the -- the fact of the matter is that
15 the lower courts would have to apply the old
16 holdings unless and until this Court changes it,
17 and the question is whether we should change it
18 under these circumstances.

19 MR. SNYDER: So, Justice Jackson, let
20 me unpack a few things from that. The first is
21 that I have taken Petitioners to argue that they
22 are not asking this Court to overrule any prior
23 decisions, that they are just asking this Court
24 to construe Block and Mottaz narrowly to not
25 actually mean jurisdiction.

1 So the -- the confusion that that
2 would cause is that on their view, the lower
3 courts weren't required to adhere to Block and
4 Mottaz at all all along.

5 JUSTICE JACKSON: That's just because
6 the dispute between the two of you is whether
7 Block and Mottaz really spoke definitively to
8 the question.

9 If we assume that to begin with, all
10 right, in a world in which we assume that the --
11 this Court using the prior methodology actually
12 held that it was jurisdictional, then I would
13 assume all the lower courts and everyone else
14 would have to abide by that until it got here
15 and the question for us would be, you know, now
16 that we have a new test for determining
17 jurisdictional nature of a statute, do we apply
18 that new test and therefore change what we said
19 before, or do -- are we somehow bound by what we
20 previously said?

21 MR. SNYDER: So, Justice Jackson, I
22 like that assumption. I think that's the real
23 world. And I -- what I would say is this Court
24 addressed exactly that argument in John R. Sand
25 and said that it is not inadministrable to have

1 statutes that are worded in similar ways but
2 that are treated differently for jurisdictional
3 purposes depending on whether this Court had
4 previously interpreted the provision at issue.

5 And -- and I had taken my friend to
6 disclaim any argument that he can satisfy the
7 stare decisis factors to overrule this
8 decision -- this Court's decisions.

9 JUSTICE KAGAN: Yeah, Mr. Snyder, I
10 mean, just on that point, I mean, we don't need
11 a new test. We have a test. We have many, many
12 decisions that have clearly stated what we do in
13 this situation, the situation being we've used
14 the word "jurisdictional" in the past and what
15 consequence does that have.

16 And we clearly stated, as you just
17 said, that if we've really addressed the issue,
18 decided the issue, then that controls. It has
19 stare decisis effect. But, if we've just kind
20 of used the word without deciding the issue,
21 then I -- then -- then that doesn't have stare
22 decisis effect and, to the contrary, we disclaim
23 any understanding that the thing was meant to be
24 jurisdictional in the pure sense.

25 So I guess you have to convince me

1 that this is just more than using the word like
2 we always used the word routinely to encompass
3 mandatory claims-processing rules.

4 MR. SNYDER: So, Justice Kagan, I want
5 to convince you of that. Let me just sort of
6 put on the table that even if you don't agree
7 with me on that, we have a ratification argument
8 that we think could lead you to the same result.
9 But let me -- let me start with the question
10 you're asking.

11 JUSTICE KAGAN: If you can't convince
12 me of this first question, you're not going to
13 convince me of the second question.

14 (Laughter.)

15 MR. SNYDER: Well, let me try even
16 harder here. I think there are two things that
17 this Court can look to in deciding whether its
18 earlier decisions were really definitive
19 resolutions or were just sort of drive-by
20 jurisdictional rulings.

21 JUSTICE KAGAN: And if I could just
22 interrupt, I mean, you are agreeing with the
23 Petitioner that the question is do we have a
24 definitive interpretation, a definitive
25 resolution. That's the language we've always

1 used or, you know, we've used for, you know,
2 five, six cases in the past.

3 MR. SNYDER: Yes. Putting aside my
4 ratification argument, again, I agree that --
5 that on this part, that is the test.

6 We think it's -- the resolution of
7 this issue in both Block and Mottaz was
8 definitive. We think the first thing that you
9 can look to is what the Court cited in
10 articulating its jurisdictional determination.
11 And in both cases, the Court cited earlier
12 decisions that had used "jurisdictional" in a
13 strict subject matter sense.

14 So, in Mottaz, for example, the only
15 case other than Block that the Court relied on
16 was the Sherwood decision that you mentioned,
17 Justice Alito, which was a decision about
18 jurisdiction under the Tucker Act in the
19 district courts. And if you read that decision,
20 it is thoroughly and strictly jurisdictional in
21 the modern sense.

22 JUSTICE KAGAN: But, see, I guess, I
23 mean, look, we can sort of, you know, try to
24 find hints of this or that and, you know, go
25 read the cited opinions and -- but I always

1 thought that what we were looking for was, in
2 the case itself, it mattered whether something
3 was jurisdictional or whether it was a
4 claims-processing rule.

5 And we said, oh, we have this
6 question, does, you know, equitable estoppel
7 apply? Does equitable tolling apply? To -- to
8 decide that question, we have to decide in --
9 you know, is it -- is it really jurisdictional,
10 or is it just claims processing? And I don't
11 see any of that in either of these two cases.

12 MR. SNYDER: So -- so, Justice Kagan,
13 I disagree with that. I think it's present in
14 both. Let me walk through them.

15 In Mottaz, the way that I think that's
16 present is, if you look at page 840 of -- of
17 this Court's opinion, the Court goes out of its
18 way to note that the government had apparently
19 raised the Quiet Title Act's statute of
20 limitations for the first time in its petition
21 for rehearing en banc.

22 JUSTICE KAGAN: Yes, you say that in
23 your brief, and I went to look at it and I was,
24 oh, if that's true, that's meaningful. But
25 then, you know, the -- the -- the -- the opinion

1 just notes it in the facts and never comes back
2 to it. It's completely irrelevant to the
3 questions that the body of the opinion decides.

4 MR. SNYDER: So, Justice Kagan, I just
5 read the different -- the -- the decision
6 differently than you, respectfully. The Court
7 notes that. It is a strange thing to note.
8 Ordinarily, if you noted that, the -- the sort
9 of next thing you would do is engage with
10 questions of whether the government had
11 forfeited it.

12 Instead, the first two sentences of
13 the very next paragraph say questions like this
14 one go to a court's jurisdiction, and then the
15 Court just dives into the analysis of the
16 statute of limitations question there, without
17 another word about the possibility of
18 forfeiture.

19 So we think that, combined with the
20 fact that those decisions that it was citing in
21 those next two sentences --

22 JUSTICE KAGAN: I mean, there's no
23 indication that anybody even raised the question
24 of waiver or forfeiture in that case, that
25 anybody thought it was important.

1 MR. SNYDER: I -- Justice Kagan, I
2 think the fact that the Court noted it in its
3 opinion and then in the next paragraph --

4 JUSTICE KAGAN: Yes, we do a lot of
5 gratuitous stuff and --

6 (Laughter.)

7 JUSTICE KAGAN: -- and -- and all this
8 was is the -- is the last paragraph of the
9 statement of facts, and the reason it's in the
10 next paragraph that we use that -- it's just --
11 it's just the last thing that happened in the
12 case. It's just fortuity that it's -- it's in
13 the next paragraph.

14 MR. SNYDER: Maybe I have more respect
15 for the -- the structure of the opinion than --
16 than you do or view it differently. You're --
17 you're better positioned to know, I suppose.

18 JUSTICE BARRETT: But, Mr. Snyder,
19 also, if you go back and look below, it seemed
20 like in the Eighth Circuit there was confusion
21 in that case about whether the Quiet Title Act
22 even applied.

23 So the waiver issue -- I mean, if you
24 really want to dig in not just to extraneous
25 statements but to what happened below, it's not

1 clear that that was in the case in that sense.

2 MR. SNYDER: So -- so, Justice
3 Barrett, I agree with that. And, candidly, if
4 -- if we had needed to, I'm certain that we
5 would have argued that it was not for --
6 forfeited for other reasons.

7 My point is just the Court didn't need
8 to get into any of those reasons because the
9 Court said this wasn't raised until the petition
10 for rehearing en banc. And, to be candid again,
11 the government had flagged it in a footnote in
12 its panel-stage brief. But the Court says it
13 apparently hadn't been raised, and then in the
14 next paragraph says it's jurisdictional and
15 doesn't deal with any of those questions about
16 whether --

17 JUSTICE BARRETT: Or it made a mistake
18 and if the Court had properly -- that maybe it
19 had been -- maybe it had been raised before,
20 maybe it wasn't forfeited, but because the Court
21 made a mistake and proceeded on the premise of a
22 mistake, we take that as jurisdictional?

23 MR. SNYDER: No, I don't think the
24 Court made a mistake at all. I mean, I think,
25 to -- to take the Chief Justice's line of

1 questioning earlier, I think, at the time these
2 cases were decided, it was clearly correct that
3 conditions on a waiver of sovereign immunity
4 were treated as going to the court's
5 jurisdiction. And in doing so, it --

6 JUSTICE KAGAN: Hmm. Irwin says
7 something different, and this goes back to what
8 Justice Jack -- Barrett said before, is -- is,
9 in fact, Irwin says, you know, we don't think
10 that -- when we said that, we don't think that
11 we were representing really what Congress
12 thought, and now we're going to correct it. And
13 that's where Irwin comes from, saying, you know,
14 this is actually a bad reflection of Congress's
15 intent and we're dropping it in favor of a
16 better reflection of Congress's indent.

17 MR. SNYDER: So I think it's true that
18 the Court said that in Irwin. The Court says
19 that it had sort of taken an ad hoc approach to
20 this in this area, but both of the decisions
21 that Irwin said sort of were on the other side
22 of this as treating these kinds of conditions as
23 non-jurisdictional were in 1985 and 1986, so
24 they were after Block was decided.

25 At the time that Block was decided,

1 this Court's precedents recognized that
2 conditions on a waiver of sovereign immunity
3 were -- went to a court's jurisdiction.

4 Now, in Irwin, the Court decided to
5 change that -- that assumption, but I think it
6 is just indisputably true that at the time that
7 Block was decided, this Court treated those
8 limits as jurisdictional. And so the fact that
9 the Court said that at the time we don't think
10 was a mistake under the then-prevailing law. We
11 think that accurately reflected this Court's
12 doctrine.

13 The fact that this Court later adopted
14 a new test that it applies on a prospective
15 basis when it's addressing statutes that it
16 hasn't previously encountered doesn't change the
17 meaning of the Court's prior decisions applying
18 that prior rule.

19 JUSTICE ALITO: We are often called
20 upon to decide what we, in fact, held in a prior
21 case because that's important for stare decisis
22 purposes. It arises in many different contexts,
23 not just when we're interpreting a statute that
24 refers to jurisdiction.

25 Do you think that the test for

1 determining what we held in a prior case and
2 therefore what is protected by stare decisis is
3 different in this context, that special clarity
4 is required here, or is it the same test that we
5 use in other contexts?

6 MR. SNYDER: I think it's the same
7 test that we -- that you use in other contexts.
8 I don't think there's any reason to apply a
9 different test in evaluating this Court's
10 jurisdictional decisions to determine whether
11 there were holdings and what those holdings
12 meant then in other contexts.

13 And I acknowledge that there are cases
14 where this Court has used "jurisdictional" in a
15 loose sense or has used "jurisdictional" just in
16 the course of sort of describing the background
17 of a statute. So, in Fort Bend County, for
18 example, this Court was dealing with whether the
19 charge filing requirement under Title VII went
20 to the Court's jurisdiction, and it acknowledged
21 that in McDonnell Douglas it had described that
22 as jurisdictional in sort of the background
23 section of the opinion. But it hadn't been at
24 issue there at all, and so the Court said it
25 wasn't bound by that.

1 JUSTICE GORSUCH: And -- and you'd
2 agree, just to follow up on Justice Alito's
3 question, that when we are trying to figure out
4 what we held in a prior case versus what's
5 extraneous, dicta, we've often cautioned parties
6 against reading our opinions like statutes and
7 giving talismanic effect to every word?

8 MR. SNYDER: So I agree with that,
9 Justice Gorsuch. My -- my colloquy with Justice
10 Kagan earlier was intended to indicate that --
11 that we think the jurisdictional nature of the
12 sovereign -- of the statute of limitations here
13 --

14 JUSTICE GORSUCH: You just think you
15 clear that bar?

16 MR. SNYDER: We think we clear that
17 bar.

18 JUSTICE GORSUCH: But you understand
19 that even -- no judge wants his or her work to
20 be read for every last period, comma, jot and
21 tittle the way we'd read a statute?

22 MR. SNYDER: That's -- that's correct.
23 I understand that.

24 JUSTICE GORSUCH: There's a degree of
25 judicial humility required about our own past

1 work.

2 MR. SNYDER: So -- so I appreciate
3 that. We think we do satisfy that bar. We
4 think the -- as I was talking about with Mottaz,
5 the significance there was not just in the use
6 of the word. We think it was the fact that it
7 used the word "jurisdictional" rather than
8 dealing with forfeiture issues.

9 If I could turn to Block and why I
10 think the jurisdictional determination really
11 mattered in Block as well, the Court there cited
12 earlier decisions that had used "jurisdictional"
13 in the context of conditions on a waiver of
14 sovereign immunity in a strict sense, including
15 Soriano, for example, which is one of the cases
16 that this Court cited in John R. Sand.

17 And then, in the closing paragraphs of
18 the Court's opinion in issuing the mandate for
19 what the courts -- for what the courts below
20 should do on remand, the Court said that
21 whatever the merits of the title dispute may be,
22 the federal defendants are correct. If North
23 Dakota's suit is barred by Section -- by the
24 statute of limitations, the courts below had no
25 jurisdiction to inquire into the merits.

1 If Petitioners were right, what that
2 sentence would have said is that the United
3 States was entitled to judgment on an
4 affirmative defense.

5 JUSTICE KAGAN: But I would think,
6 Mr. Snyder, that that's exactly the kind of
7 drive-by use of "jurisdiction" that we've talked
8 about many times before. I mean, if you look at
9 the page where the Court does talk about
10 Soriano, the Court never uses the word
11 "jurisdiction" there. This is 287.

12 And, in fact, what the Court is saying
13 is that we've been unclear about what
14 interpretive principles to apply to, you know,
15 statutes of limitations and other conditions on
16 sovereign immunity. Do we strictly construe
17 them and so forth? And -- and so the -- the
18 issue on that page is really about how do we go
19 about interpreting waivers of sovereign
20 immunity. It's nothing about this
21 jurisdictional question.

22 And -- and then, on page 292, five
23 pages later, it says, you know, the suit is
24 barred, and so the courts below had no
25 jurisdiction. I mean, that's just a very

1 standard thing that we've noticed in many of our
2 opinions, which is that instead of saying so the
3 court shouldn't have addressed the issue, we say
4 so the court had -- didn't have jurisdiction
5 over the issue, because we're not making a clear
6 distinction between real jurisdiction and other
7 reasons not to address issues.

8 MR. SNYDER: So, Justice Kagan, again,
9 I -- I respectfully disagree. I -- I think the
10 fact that the Court said they had no
11 jurisdiction to address the merits had a great
12 deal of significance there because the district
13 court had already held a trial in the case.

14 And so, if Petitioners were right, the
15 most the United States would have gotten was a
16 judgment saying that we had prevailed on our
17 affirmative defense, and so the district court
18 was not going to affirmatively quiet title in
19 North Dakota. But North Dakota's hope was to
20 keep those factual findings from the trial in
21 effect in the hope that they could use them for
22 preclusion purposes if the issue came up again
23 in the future.

24 JUSTICE SOTOMAYOR: Counsel, I -- I'm
25 sorry. Maybe I'm too simplistic. I think I

1 might be. But in neither of those two cases was
2 there an issue of equitable tolling, equitable
3 concealment, fraudulent estoppel.

4 In each of them -- in one of them, it
5 was, does the six-year statute apply or does the
6 12-year statute apply? So I have an almost
7 impossible time understanding that the Court was
8 focused on, thinking about, believing it was
9 ruling that this was subject matter jurisdiction
10 in -- in some firm way.

11 Certainly, there are suggestions of
12 it, but that wasn't the holding of Brown for
13 sure. And Mottaz was the same thing. Nobody
14 was raising an equitable reason to toll.
15 Everybody was just focused in on which statute
16 applied or -- I don't understand. Why am I --
17 why am I -- why is my simplicity out of joint?

18 MR. SNYDER: I -- I don't think it's
19 simplicity. I -- but I -- so, in Mottaz, we
20 think that there was a question about
21 forfeiture, and we think that the way the Court
22 addressed that question about forfeiture was,
23 rather than dealing with sort of the complicated
24 posture of the court below --

25 JUSTICE SOTOMAYOR: Well, the problem

1 is, if it was forfeited, we had no reason to
2 rule at all --

3 MR. SNYDER: I --

4 JUSTICE SOTOMAYOR: -- meaning, if we
5 take pure subject matter jurisdiction and the
6 Court thought it -- it can be raised at any
7 single time, that was the belief back then, so
8 whether it was raised in a petition for
9 rehearing or it was raised even after a party
10 could raise it at any point and the Court had to
11 satisfy itself of jurisdiction, yet this Court
12 didn't.

13 MR. SNYDER: So, Justice Sotomayor,
14 that last part is where I disagree with you.
15 The -- so what I'm arguing about Mottaz is that
16 if -- if the Court in Mottaz had understood the
17 statute of limitations to be non-jurisdictional,
18 then the fact that the government had apparently
19 pressed it for the first time in a petition for
20 rehearing en banc below would have led the Court
21 to engage in a forfeiture analysis and decide
22 whether it would --

23 JUSTICE SOTOMAYOR: Why, if that's
24 something you leave for the court below? That's
25 not something you as a court can choose to

1 ignore. If you raise lack of subject matter
2 jurisdiction, we can't -- we have to address
3 that question.

4 MR. SNYDER: So that's exactly my
5 point, that the reason this Court addressed it
6 was that this Court understood it to go to
7 subject matter jurisdiction. If this Court had
8 thought that it was non-jurisdictional, the
9 Court would have needed to talk about
10 forfeiture. It didn't talk about forfeiture
11 because, as it said in the very next paragraph,
12 conditions like this one at the time went to
13 subject matter jurisdiction.

14 And the other thing I'd say is that I
15 think it's a little unfair to sort of critique
16 these opinions because they didn't go on at
17 length --

18 JUSTICE SOTOMAYOR: Well --

19 MR. SNYDER: -- about --

20 JUSTICE SOTOMAYOR: -- so why don't we
21 do something and require that the opinion speak
22 clearly? Isn't that what we have said in Wong
23 and Irwin? We depended on whether the Court has
24 spoken to the issue. So, unless we have a clear
25 statement that that was what was litigated, why

1 would we try to give stare decisis to issues
2 that weren't identified by the Court?

3 MR. SNYDER: I -- I -- I mean, so, in
4 Mottaz, the Court says that conditions on a
5 waiver of sovereign immunity go to the Court's
6 jurisdiction, and the next sentence identifies
7 statute of limitations in a case where the
8 statute of limitations here was at issue as
9 among those conditions. And then, for the
10 reasons I've explained, we think it was directly
11 at issue there.

12 The point I was going to make about
13 the Court not going on at length about this is
14 it sort of creates this strange world where
15 points that were very obvious and
16 straightforward at the time get less respect
17 today. At the time, it was obvious that this
18 was a question of jurisdiction because that was
19 the prevailing rule that this Court applied.

20 JUSTICE KAGAN: Well, that, again, is
21 relitigating, I think, Irwin. But -- but -- I
22 mean, just one way to think about it is take the
23 case where we do say, look, there's a rule here.
24 We've said it, John R. Sand, you know, and so we
25 have to respect our precedent.

1 So the reasons that John R. Sand gives
2 for that, it goes through two opinions at great
3 length, two prior opinions saying that the
4 plaintiff had asked for equitable tolling or
5 that there was a question of waiver, and in each
6 of those two cases, it would have made a
7 difference whether the rule was jurisdictional
8 in the strict sense or not.

9 And that's the kind of proof that
10 we've required. In other words, you know, we've
11 -- you -- you know, look back. This mattered to
12 -- to the Court and the Court fully considered
13 it. And -- and if we -- if we were to write the
14 opinion coming out your way, we couldn't do
15 anything that comes close to what John R. Sand
16 looks like.

17 MR. SNYDER: So, Justice Kagan, again,
18 I just respectfully disagree. I think it -- it
19 didn't matter in the same ways in Block and
20 Mottaz that it did in the cases that the Court
21 cited in John R. Sand. But it mattered.

22 It -- it allowed the Court to deal
23 with the issue without concerning itself with
24 forfeiture in Mottaz. In Block, it dictated the
25 course of the proceedings on remand. On remand,

1 North Dakota tried to keep the findings of fact
2 that had been entered in the earlier trial, but
3 the Eighth Circuit, sort of a contemporaneous
4 understanding of this Court's decision in that
5 very case said no, this issue is jurisdictional,
6 and, therefore, the proper remedy, even though
7 there's already been a trial, is to remand to
8 the district court and dismiss the complaint,
9 notwithstanding the fact that there had already
10 been a trial.

11 A few years later, after Congress
12 amended the Quiet Title Act, North Dakota was
13 able to sue again, and this time around, because
14 those findings had been vacated, the United
15 States was successful on the merits, whereas
16 previously it had been unsuccessful.

17 So the jurisdictional treatment was
18 dispositive of the conflict at issue there.

19 JUSTICE BARRETT: Mr. Snyder, can I --

20 CHIEF JUSTICE ROBERTS: Well, also,
21 you -- Justice Kagan said you were relitigating
22 Irwin. I -- I just want you to know that I
23 would intently listen to such an argument.

24 (Laughter.)

25 CHIEF JUSTICE ROBERTS: But I think

1 it's the amicus in -- in this case that
2 suggested there were other consequences to
3 whether this provision was jurisdictional than
4 the equitable tolling or equitable estoppel, and
5 one of them was that the government, I don't
6 know, won't or can't enter in the settlement
7 negotiations if the bar is -- is jurisdictional.

8 And I wanted to find out what exactly
9 the government's position was on that.

10 MR. SNYDER: So I think that it's true
11 that if the bar is jurisdictional, the
12 government would not be able to enter into
13 prelitigation agreements to toll the statute of
14 limitations.

15 But, in those circumstances --

16 CHIEF JUSTICE ROBERTS: Well, I guess
17 I wouldn't say it's to -- I -- I'm questioning
18 the predicate. If it's true that it's
19 jurisdictional, then you can't do this. But
20 what if the whole point is the jurisdictional
21 aspect is being litigated?

22 Like here, could you enter into
23 negotiations here and settle this case because
24 whether it's jurisdictional or not is up in the
25 air?

1 MR. SNYDER: So we could -- we could
2 settle this case. My understanding of the
3 amicus's argument was not that it would preclude
4 settlements but that it would force parties to
5 sort of bring these things up earlier because
6 the government couldn't agree to a tolling
7 arrangement.

8 Now we don't think that's a serious
9 concern because the -- the Quiet Title Act
10 already provides a generous 12-year statute of
11 limitations. We think that's ample time once
12 you know or should know of your claim to reach
13 a -- a resolution of that claim with the
14 government without needing a tolling agreement.

15 And if you run up to that bar, it
16 would be possible to file suit and then ask a
17 court to -- to stay the litigation while you try
18 to negotiate it. But I do want to address some
19 of the other consequences of the jurisdictional
20 versus non-jurisdictional line.

21 One of those deals with the -- the
22 practical consequences of Petitioners' position
23 in litigating Quiet Title Act cases. If you
24 look at pages 18 and 19 of our brief in
25 opposition and 19 and 20 of our merits brief, we

1 point to nine different courts of appeals that
2 have all treated this rule as jurisdictional, in
3 some cases, going back decades, and in those
4 circuits, when a timeliness question comes up,
5 that timeliness question can be resolved at the
6 outset of the case.

7 We think that's important because, as
8 this Court explained in Block, one of the
9 primary reasons the executive branch was so
10 insistent on having a 12-year statute of
11 limitations in the Quiet Title Act was a concern
12 about the burden on the executive branch of
13 needing to litigate stale claims. So --

14 JUSTICE GORSUCH: Well, but one could
15 make that argument with respect to any statute
16 of limitations. It always serves the value of
17 repose, but we have to respect what balance
18 Congress struck, not what balance we might
19 prefer.

20 And one can make an argument that it
21 also serves some useful value to not have a
22 strict statute of limitations jurisdictional
23 bar, right?

24 MR. SNYDER: Right.

25 JUSTICE GORSUCH: I mean, you can see

1 their policy arguments on the other side, I
2 assume.

3 MR. SNYDER: So I think the policy
4 arguments on the other side are especially weak
5 in this case for --

6 JUSTICE GORSUCH: Oh, I'm sure you do.
7 (Laughter.)

8 MR. SNYDER: So -- so let me --

9 JUSTICE GORSUCH: I'm sure you do.
10 But you'd agree that a rational Congress could
11 disagree with that?

12 MR. SNYDER: I would agree that a
13 rational Congress should -- could disagree with
14 that. I don't think a rational Congress --

15 JUSTICE GORSUCH: Should, of course, I
16 understand. But could. And so why isn't that
17 the end of the policy arguments?

18 MR. SNYDER: So, because,
19 respectfully, this Court has looked to those
20 policy arguments in explaining why it's
21 particularly reluctant to treat provisions as
22 jurisdictional. And so I think it's relevant
23 here that those policy arguments just apply with
24 less force or cut in a different direction in
25 the Quiet Title Act context.

1 There are two things in particular
2 that I'd point to. The first is that in
3 Arbaugh, one of the reasons that this Court gave
4 for preferring non-jurisdictional to
5 jurisdictional readings was that that line can
6 affect the decisionmaker that decides any
7 disputes of fact.

8 But, in the Quiet Title Act, whether
9 this is resolved at the 12(b)(1) stage or after
10 trial, it's going to be resolved by the exact
11 same decisionmaker.

12 Justice Sotomayor, you were asking
13 about what difference this will make in the
14 case. The reality is that the district court
15 here has already looked at all of the timeliness
16 questions -- all of the timeliness evidence. I
17 don't think it disregarded that evidence. It
18 was just that 12(b)(1) allowed it to consider
19 all of the evidence.

20 JUSTICE GORSUCH: Well, I'm not sure
21 how that cuts. You're saying it's going to be
22 very efficient either way.

23 MR. SNYDER: No.

24 JUSTICE GORSUCH: The district court's
25 going to be able to get to this rather promptly.

1 Whether it's 12(b)(1) or a motion for summary
2 judgment, it's going to be before the judge.
3 You don't have to go to a jury. It's just going
4 to be who bears the burden. And I understand
5 the government would prefer not to carry the
6 burden, but that's just policy talk, right?

7 MR. SNYDER: No, I don't -- I don't
8 think so. The burden I don't think matters very
9 much. It will -- it will matter in the cases
10 where the evidence is completely in equipoise,
11 but, other than that, that burden question, I
12 don't think, is going to be significant.

13 The concern that I'm identifying is
14 the one that this Court talked about in Block as
15 leading to adoption of the statute of
16 limitations, which is a concern about the burden
17 of litigating stale claims.

18 JUSTICE GORSUCH: Well, what do we do
19 about the government's own representations when
20 it proposed this 12-year statute of limitations
21 that suggested if the government chooses to
22 raise the issue, which is a suggestion that the
23 government itself -- now I understand the
24 government can change its views, I understand,
25 but the government itself at least at one time

1 thought this was something other than subject
2 matter jurisdiction --

3 MR. SNYDER: So, Justice --

4 JUSTICE GORSUCH: -- when it proposed
5 the law.

6 MR. SNYDER: So, Justice Gorsuch, if
7 you want to consider the legislative history --

8 JUSTICE GORSUCH: I'm -- ooh.

9 (Laughter.)

10 MR. SYNDER: I thought that might be
11 effective.

12 JUSTICE GORSUCH: I'm asking you about
13 the government's own positions.

14 MR. SNYDER: We understand those
15 representations very differently. What the
16 government said was that the -- the plaintiff
17 would merely need to allege that he didn't know
18 or had no reason to know of the claim.

19 Now, on their view, the plaintiff
20 wouldn't even need to allege that. If this is
21 an affirmative defense, it doesn't -- the
22 plaintiff doesn't need to say anything at all
23 about it. And --

24 JUSTICE GORSUCH: What about the
25 subsequent sentence? So -- I mean, in another

1 world, if -- if the sentence were written
2 differently, I suspect we'd be -- have a call
3 for deference to it. Instead, it's -- you're
4 running away from it. So what about that other
5 sentence --

6 MR. SNYDER: I'm not -- I'm not
7 running away from it at all. What we -- what we
8 said in that next sentence was, if the plaintiff
9 makes that representation, then the government
10 would have the burden of overcoming it.

11 And I think that's absolutely true. I
12 mean, once you have a case where, on one side of
13 the ledger, you have the plaintiff's declaration
14 that he didn't know and -- and couldn't know
15 about the existence of the government's claim,
16 then, of course, now that you've got evidence on
17 one side, the government needs to come forward
18 with evidence on the other side.

19 JUSTICE GORSUCH: So the burden --

20 MR. SNYDER: I don't think that's --

21 JUSTICE GORSUCH: -- the burden would
22 always rest with the plaintiff if it's
23 jurisdictional, though, the burden of
24 persuasion.

25 MR. SNYDER: Yes, the burden of

1 persuasion. I don't think that that letter was
2 speaking in precise terms about the burden of
3 persuasion.

4 JUSTICE GORSUCH: Ah, so the
5 government's letter wasn't speaking precisely.
6 Okay. All right. Thank you.

7 MR. SNYDER: I mean, the government's
8 letter was talking about the practical -- I'm
9 sorry. I see my time has expired.

10 CHIEF JUSTICE ROBERTS: You can finish
11 your sentence.

12 (Laughter.)

13 CHIEF JUSTICE ROBERTS: Maybe.

14 MR. SNYDER: Was speaking about
15 burdens. We think that the -- the burdens to be
16 concerned with are the burdens of litigating
17 stale claims, which Petitioners' rule would
18 require a trial for.

19 CHIEF JUSTICE ROBERTS: Justice
20 Thomas?

21 Justice Alito?

22 JUSTICE ALITO: What do you make of
23 the 1986 amendments?

24 MR. SNYDER: So, Justice Alito, at the
25 time that Congress adopted those amendments,

1 every single one of the courts of appeals to
2 have addressed this issue had held that the
3 statute of limitations was jurisdictional.

4 My friends say that they were just
5 sort of using language loosely. That's not
6 true. If you -- if you look at the decisions
7 that we cite at 19 and 20 of our brief, the
8 First Circuit had held that because this went to
9 jurisdiction, it was required to raise it sua
10 sponte on appeal. The -- the Third Circuit held
11 the same thing. The Eighth Circuit, on remand
12 in Block, held that because it was
13 jurisdictional, the remedy was to remand and
14 dismiss the complaint even though there had
15 already been a trial.

16 So we think Congress is presumptively
17 aware of those decisions, and then you have the
18 additional fact that this Court had, in Block
19 and Mottaz, described this limit as
20 jurisdictional. And even if you didn't think
21 that those were square holdings of the Court, I
22 think they crystallized attention on this
23 consensus in the lower courts in a way that the
24 Court hasn't encountered in prior cases and make
25 it that much more obvious that Congress, when it

1 acted to amend the -- the statute of limitations
2 in direct response to Block but did nothing to
3 displace this jurisdictional treatment, intended
4 to ratify that treatment.

5 CHIEF JUSTICE ROBERTS: Justice
6 Sotomayor, anything further?

7 Justice Kagan?

8 JUSTICE KAGAN: We -- we wasted a lot
9 of time in Beggerly if you're right. And if
10 you're right, in Beggerly, we could have issued
11 a summary opinion just citing these two cases,
12 but we didn't do that. You know, we said, is
13 equitable tolling available under the Quiet
14 Title Act? And we went through an extended
15 analysis of the text, of the history, and we
16 addressed that question.

17 If you're right, we had two precedents
18 saying equitable tolling was not available
19 because this is jurisdictional.

20 MR. SNYDER: So, Justice Kagan, of
21 course, the holding in Beggerly fully supports
22 us here. The fact that equitable tolling --

23 JUSTICE KAGAN: That's not the
24 question, Mr. Snyder. The question is, why was
25 all of that opinion necessary?

1 MR. SNYDER: So, at the time that this
2 Court decided Beggerly, it was, frankly, unclear
3 what the Court had done in Irwin. So I
4 mentioned earlier that one of the decisions
5 Block relied on was Soriano. Justice White's
6 separate opinion in Irwin disagreed with the
7 majority's new presumption, and one of the
8 things he said was that it directly overruled
9 Soriano. And so, when --

10 JUSTICE KAGAN: Well, there was a
11 dissent, but Irwin --

12 MR. SNYDER: No, no, no. Absolutely,
13 it was a dissent, but I'm saying at the time
14 that Beggerly was decided, I think there was a
15 real question about whether this Court's
16 pre-Irwin decisions survived Irwin or not.

17 JUSTICE KAGAN: Well, you know, if
18 that's right, and I don't really think it is,
19 but, if it's right, then the Court might have
20 said something like that, and -- but the Court
21 -- but nobody addressed this question. Nobody
22 thought that these two opinions had anything to
23 do with this question.

24 MR. SNYDER: So, Justice Kagan, we --
25 we made the judgment to just argue that even

1 under Irwin, it was abundantly clear that
2 Congress did not intend courts to equitably toll
3 the statute of limitations.

4 And I -- I think the fact that it's so
5 clear that Congress didn't intend to allow
6 equitable tolling is, you know, a factor on the
7 scale in thinking that Congress really did
8 intend this to be jurisdictional.

9 JUSTICE KAGAN: Thank you.

10 CHIEF JUSTICE ROBERTS: Justice
11 Gorsuch?

12 Justice Kavanaugh?

13 Justice Barrett?

14 Justice Jackson?

15 JUSTICE JACKSON: Yes. So I -- I
16 realize that under John R. Sand the question
17 that we're all debating now is whether the prior
18 cases were definitive holdings that the Quiet
19 Title Act's time bar is jurisdictional, but can
20 I just for a second ask you to hypothesize a
21 world in which we didn't have a prior case about
22 this issue, and so we were applying what we now
23 understand to be the way in which you determine
24 the question of what Congress intended about the
25 jurisdictional nature of this?

1 In that world, is the government's
2 position -- and I wasn't quite clear from pages
3 12 and 13 of your brief -- is the government's
4 position that this would be jurisdictional under
5 the current test?

6 MR. SNYDER: So, Justice Jackson, let
7 me identify the -- the sort of four things that
8 we would point to as supporting jurisdictional
9 treatment here. I will -- I will front that the
10 Court rejected three of them in Wong. So I
11 don't know if Wong sort of goes or stays in your
12 hypothetical, but let me put them on the table
13 at least.

14 The first is that the language here
15 bears a marked similarity to the language of the
16 Tucker Act statute of limitations that this
17 Court had held for well over a century was
18 jurisdictional.

19 The second is that to the extent
20 there's a difference between this language and
21 that language, it cuts in favor of treating this
22 language as jurisdictional. The Tucker Act
23 provision said every claim shall be barred.
24 This provision says any civil action shall be
25 barred. And so the -- the difference there is

1 that this provision is speaking more to the
2 Court's power to adjudicate the claims than to
3 the underlying merits of the claims. That would
4 point -- that's the one that was not at issue in
5 Wong.

6 The third is that this language is
7 definitive. It doesn't invite Congress to -- or
8 it doesn't invite the courts to make exceptions.

9 And the fourth is that this arose in
10 the context of a waiver of sovereign immunity,
11 which the Court, at the time that this statute
12 was passed in 1972, had repeatedly said
13 conditions on a waiver of sovereign immunity go
14 to the court's jurisdiction.

15 Now, again, the Court rejected most of
16 those in Wong. And, candidly, I don't think the
17 one more that we've added here would have
18 changed the outcome in Wong. But those are --
19 those are what we would point to.

20 JUSTICE JACKSON: Thank you.

21 CHIEF JUSTICE ROBERTS: Thank you,
22 counsel.

23 Mr. McCoy, rebuttal?

24

25

1 REBUTTAL ARGUMENT OF JEFFREY W. McCOY
2 ON BEHALF OF THE PETITIONERS

3 MR. McCOY: Thank you, Mr. Chief
4 Justice.

5 On the point about congressional
6 acquiescence, as this Court said in Alexander,
7 appellate courts' interpretations provide little
8 weight in the interpretive process of what
9 Congress meant and that inaction is not an
10 acquiescence to it.

11 And as for the lower -- the appellate
12 courts' opinions on how they treated it, as
13 Justice Gorsuch said yesterday in oral argument,
14 appellate courts say a lot of things. That does
15 not make it stare decisis on this Court.

16 And, ultimately, the question is what
17 Block and Mottaz say. And I -- my friend's rule
18 would make it more confusing for lower courts.
19 So we spent a lot much time digging deep into
20 what Mottaz said, even looking at oral arguments
21 and -- but the -- what this Court had said in
22 John R. Sand, and as Justice Kagan said, it's --
23 is it a definitive earlier statement? Was it
24 the holding? That is a clear factor for lower
25 courts to decide if they are presented with an

1 issue like this. They don't have to go in.

2 I'd also like to address in the
3 forfeiture argument, although I think, again, it
4 was not in the holding, but the plaintiff there
5 forfeited any argument, as this Court
6 recognized. The plaintiff did not -- did not
7 bring the claim under the Quiet Title Act. At
8 this Court, in opening statements Plaintiff's
9 counsel said this case has to rise and fall as a
10 General Allotment Act claim. This is not a
11 Quiet Title Act claim.

12 So in that, they forfeited any
13 arguments about whether or not the -- the
14 government had waived or forfeited anything
15 about -- about whether it was -- whether this
16 Quiet Title Act was waived.

17 Finally, I would just like to -- the
18 important thing as Justice Gorsuch was getting
19 at, is that -- what did Congress intend? And
20 although Justice Gorsuch may not want to look at
21 the legislative history, the Senate report makes
22 it clear. There was grave inequities. There
23 was grave inequities because property owners
24 could not bring these claims to resolve these
25 disputes.

1 And so it passed the Quiet Title Act
2 to resolve those grave inequities and it wants
3 these property disputes to be resolved and
4 making it jurisdictional makes it harder to
5 resolve those claims.

6 If there are no further questions.
7 Thank you.

8 CHIEF JUSTICE ROBERTS: Thank you,
9 counsel. The case is submitted.

10 (Whereupon, at 11:09 a.m., the case
11 was submitted.)

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